

**Opinion No. 45-4791**

September 17, 1945

**BY:** C. C. McCULLOH, Attorney General

**TO:** Mr. Eugene Allison, Chairman State Corporation Commission Santa Fe, New Mexico

{\*132} Replying to your letter of September 9, 1945, wherein you request {\*133} an opinion as to whether the "Corporation Commission can, under Sections 47-101 -- 47-110, Aeronautics, promulgate rules and regulations compelling all common carriers to carry public liability and public damage insurance."

Laws and regulations being in effect for rail and motor carriers, I assume you mean "all" air carriers.

The Legislature has not directly provided for protection to the public by enacting a law making it compulsory for air carriers to obtain liability insurance, as provided in the case of motor carriers. However, the Legislature has delegated broad rules and regulatory powers in the following section:

"47-107. State Corporation Commission may make rules and regulations. -- The public safety requiring and the advantages of uniform regulation making it desirable in the interest of aeronautical progress, the State Corporation Commission is hereby authorized to make, from time to time, regulations concerning such common carriers, and air traffic rules applicable to the operation of all aircraft within this state: Provided, however, that such regulations and air traffic rules shall conform to and coincide with the provisions of the Air Commerce Act of May 20th, 1926, and all amendments thereto passed by the Congress of the United States and the air commerce regulations and air traffic rules adopted by the Secretary of Commerce pursuant thereto, as nearly as may be and insofar as the same are applicable; which said regulations and air traffic rules, so to be made by the state corporation commission, are hereby declared to be necessarily incident to the exercise of its jurisdiction over the common carriers mentioned in Section 6 (Sec. 47-106) of this act."

I have searched the United States Code, Section 401, et seq, and Code of Federal Regulations, 1944 Supplement, Rules and Regulations of Secretary of Commerce, and fail to locate any legislation or regulation in conflict with the above statute.

It is my opinion that if the Corporation Commission deems it necessary for the public safety and aeronautical progress, that air carriers be required to obtain public liability and property damage insurance, or to require air carriers to establish financial responsibility for claims in some other satisfactory manner, it is incident to the jurisdiction and authority delegated to the Commission to promulgate rules and regulations relating to air carriers.

By THOS. C. McCARTY,

Asst. Atty. General